

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1422**

TestResources, Inc.,
Appellant,

vs.

Metal Tech Industries, Inc.,
Respondent.

**Filed May 1, 2023
Affirmed
Slieter, Judge**

Scott County District Court
File No. 70-CV-20-6120

Michael H. Frasier, Chad A. Snyder, Rubric Legal LLC, Minneapolis, Minnesota (for appellant)

David G. Hellmuth, Ryan M. Theis, Brendan M. Kenny, Hellmuth & Johnson, Edina, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal after a court trial involving a breach-of-contract action, appellant-seller challenges the district court's judgment in favor of respondent-buyer. Because we conclude that the district court acted within its discretion by determining that appellant-seller breached the contract and caused the damages awarded, we affirm.

FACTS

The following facts derive from the court trial. Appellant-seller TestResources Inc. is a company based in Shakopee, Minnesota that builds and sells universal testing machines. These machines test materials by compressing or pulling them under different conditions. Respondent-buyer Metal Tech Industries Inc. is a gasket-materials manufacturer based in Iowa Falls, Iowa. Metal Tech wanted to replace and upgrade its testing equipment, so a representative approached TestResources about building a universal testing machine.

During communications between the companies in 2018, Metal Tech identified 17 tests that it needed the machine to perform. In late October 2018, TestResources sent a document entitled “quote” that outlined components, software, services, and pricing information related to the machine, and included a link to TestResources’ terms and conditions. As discussions between the companies about Metal Tech’s needs continued, TestResources sent eight updated documents entitled “quote” in November and December 2018.

TestResources shared the ninth version of the quote in late December 2018, updated according to communications between the parties. The quote stated that the machine would be a “turnkey system” and also indicated that final payment was due “Upon Run-Off Acceptance,” but did not define the term. In January 2019, Metal Tech issued a purchase order to TestResources for the machine and paid \$54,167.50, 50% of the purchase price identified in the quote and now included in Metal Tech’s purchase order. The purchase order defined “run-off acceptance” to mean that the machine would not be considered

“fully delivered and accepted . . . until tests listed on Exhibit A [were] successfully completed at TestResources['] facility.” The purchase order also required a successful second “run-off” test at Metal Tech’s facility, using the same criteria in Exhibit A. Representatives from the companies discussed the tests listed in Exhibit A prior to the issuance of the purchase order.

In June 2019, four senior Metal Tech employees traveled to the TestResources facility in Shakopee to observe the machine’s performance of the “run-off acceptance” tests identified in TestResources’ quote and defined in Metal Tech’s purchase order. According to Metal Tech, the machine failed all 17 tests listed in Exhibit A of the purchase order, and Metal Tech employees left the TestResources facility without accepting the machine. TestResources asserts that it “tendered the machine for inspection” in June 2019, but that Metal Tech “refused to take delivery of the machine after inspecting it for three days” and “did not identify any way in which the machine did not conform to the quote when it rejected the machine.”

The weeks following the “run-off acceptance” visit involved identifying what improvements to the machine were necessary to meet Metal Tech’s requirements. Ultimately, Metal Tech did not take delivery of the machine nor pay the remaining balance of \$54,167.50 of the purchase price.

In March 2020, TestResources sued Metal Tech, alleging breach of contract because Metal Tech failed to pay the remaining balance. Metal Tech counterclaimed, alleging that TestResources breached the contract based on the machine’s failed performance of the “run-off” testing.

Following a three-day court trial, the district court determined that TestResources did not prove Metal Tech breached the contract. Instead, the district court found that TestResources breached the contract by producing a machine that was not able to successfully conduct “run-off” testing. The district court awarded Metal Tech \$138,814.09 in damages.

TestResources filed a motion for a new trial, which the district court denied. TestResources appeals.

DECISION

“On appeal from judgment following a court trial, this court reviews whether the district court’s findings were clearly erroneous and whether the district court erred as a matter of law.” *In re Distrib. of Atty’s Fees*, 855 N.W.2d 760, 761 (Minn. App. 2014), *aff’d*, 870 N.W.2d 755 (Minn. 2015). To conclude that findings of fact are clearly erroneous, we must be “left with a definite and firm conviction that a mistake has been committed.” *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted).

TestResources argues that the district court erred by ruling in favor of Metal Tech on its breach-of-contract counterclaim. TestResources challenges the district court’s determinations that (1) Metal Tech’s purchase order, instead of TestResources’ quote, constituted an offer and, thus, the terms of the contract; (2) TestResources breached the contract with Metal Tech; and (3) Metal Tech was damaged in the amount of \$138,814.09.

As a threshold matter, we need not resolve whether TestResources’ quote or Metal Tech’s purchase order constituted an offer which was accepted and, thus, contains the

relevant contract terms. Both documents stated that payment and acceptance of the machine were contingent on “run-off acceptance.” The quote left the term undefined but the purchase order provided an explicit description. And it was that term that the district court determined TestResources breached.

We conclude that the district court did not err by relying on the definition of “run-off acceptance” included in Metal Tech’s purchase order. Communications between the parties from 2018, as well as the trial testimony, indicate that the parties intended “run-off acceptance” to be defined by the tests listed in Metal Tech’s purchase order. As a result, we need not determine whether TestResources’ quote or Metal Tech’s purchase order constitutes the contract terms because both contain the contract term relevant to this appeal: “run-off acceptance.”

I. The district court did not err by determining that TestResources breached the contract.

“The elements of a breach of contract claim are (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to [their] right to demand performance by the defendant, and (3) breach of the contract by defendant.” *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014) (quotation omitted). “A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract.” *Id.* Neither party disputes that a contract was formed; they dispute the controlling terms and whether those terms were breached. Therefore, we review the third element.

Because the third element presents a fact question, we review the district court’s factual findings for clear error. *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (analyzing whether appeal presented question of law or fact). In determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to the district court’s findings and examine the record to see if there is reasonable evidence to support the district court’s findings. *Kenney*, 963 N.W.2d at 221. We also defer to the district court’s credibility findings. Minn. R. Civ. P. 52.01; *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

TestResources argues that the district court erred because (1) it did not identify the “necessary” terms in TestResources’ quote that it found were included within Metal Tech’s purchase order and (2) it relied on inadmissible evidence of a breach. We address each argument in turn.

As we have already noted, the district court correctly determined that both documents (the quote and the purchase order) required successful completion of “run-off” testing. Hence, the relevant “necessary” term was identified. The district court determined that TestResources breached the contract because “the machine was incapable of performing the tasks it was commissioned for and was therefore defective” as demonstrated by its “fail[ure] to successfully administer the 17 tests” identified in Exhibit A as the “run-off” testing required pursuant to the contract.

These findings are supported by the record. During the court trial, a Metal Tech representative testified that during Metal Tech’s June 2019 visit to inspect the machine, none of the tests listed in Exhibit A were successfully completed because “[e]ach test had

an issue of some sort,” such as missing or broken equipment and necessary but unavailable supplies. Although one TestResources representative testified that the testing “went pretty well” and that the machine was ready to ship after the inspection, the district court did not find that testimony credible. Instead, it found that testimony from Metal Tech employees “provided detailed and consistent recollection of the events.” We defer to the district court’s credibility findings. Minn. R. Civ. P. 52.01; *Sefkow*, 427 N.W.2d at 210. And in an appeal from a court trial, we do not reconcile conflicting evidence. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). Therefore, the district court’s finding that TestResources failed to provide a machine that could pass “run-off” testing was not clearly erroneous. The district court acted within its discretion by determining, based on this finding, that TestResources breached the contract.

TestResources also challenges the district court’s findings related to the breach because, it argues, the district court improperly relied on communications from TestResources “sent after the dispute arose to offer compromises.”

“We afford the district court broad discretion when ruling on evidentiary matters, and we will not reverse the district court absent an abuse of that discretion.” *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015).

During trial, Metal Tech offered an email exchange between employees of TestResources and Metal Tech. TestResources objected based on Minn. R. Evid. 407 (subsequent remedial measures) and 408 (compromise and offers to compromise). The district court determined that the emails did not discuss “resolving any sort of legal dispute” and instead related to “continuing efforts to build [the] machine,” so it overruled

TestResources’ objection and admitted the email exchange. In its findings of fact, conclusions of law, and order for judgment following trial, the district court relied on the email exchange as support for a finding of fact that “Metal Tech employees compiled a list of 15 major issues that required fixing before the machine would conform to the purchase order and successfully complete the tests according to the standards.” It alluded to it a second time as “further evidence that the machine did not meet Metal Tech’s requirements.”

We discern no abuse of discretion in the district court’s decision to overrule TestResources’ objection. Rule 407 prohibits admission of evidence of subsequent remedial measures “to prove negligence, culpable conduct, a defect in a product, a defect in a product’s design, or a need for a warning or instruction,” but “does not require exclusion when the evidence is offered for another purpose.” Rule 408 applies only once there is “a genuine dispute as to either validity or amount” of a claim. Minn. R. Evid. 408 1977 comm. cmt. Moreover, the district court’s use of the email exchange was supplemental to other unchallenged evidence in the record, so any potential error with its admission was harmless. *See* Minn. R. Civ. P. 61.

II. The district court did not err by awarding damages to Metal Tech.

TestResources argues that the district court’s award of \$138,814.09 in breach-of-contract damages should be reversed because (1) “Metal Tech failed to produce reliable, admissible damages evidence,” (2) the district court improperly awarded expert fees as breach-of-contract damages, and (3) the district court “awarded damages without finding causation.” We are not persuaded.

Damages are reviewed under an abuse of discretion standard. *Holiday Recreational Indus., Inc. v. Manheim Servs. Corp.*, 599 N.W.2d 179, 183 (Minn. App. 1999). Findings on damages will not be set aside unless clearly erroneous. *Kohn v. City of Minneapolis Fire Dept.*, 583 N.W.2d 7, 14 (Minn. App. 1998), *rev. denied* (Minn. Oct. 20, 1998). “Generally, we will not disturb a damage award unless the ‘failure to do so would be shocking or would result in plain injustice.’” *Dunn v. Nat’l Beverage Corp.*, 745 N.W.2d 549, 555 (Minn. 2008) (quoting *Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 199 (Minn. 1986)). Moreover, in the context of damage awards, “appellate courts may not sit as factfinders and are not empowered to make or modify findings of fact.” *Id.* (quotations and citation omitted).

As a general matter, the appropriate measure of damages for a breach of contract is the amount that “naturally and necessarily result[s] from the alleged breach.” *Logan v. Norwest Bank Minn., N.A.*, 603 N.W.2d 659, 663 (Minn. App. 1999).

A. Damages Evidence

Metal Tech’s president testified related to damages and, during his testimony, relied on Metal Tech’s answers to interrogatories. TestResources asserts that the evidence of damages was inadequate for two reasons: (1) the interrogatories, upon which the damages amount was based, were unreliable because they reflected estimates and (2) Metal Tech failed to provide any of the documents it relied on to support its calculations during discovery. We discern no error by the district court.

TestResources cites one case in support of its argument. *See Jacobs v. Rosemount Dodge-Winnebago South*, 310 N.W.2d 71, 78 (Minn. 1981). In *Jacobs*, the supreme court

noted that damages awards “must be reasonable and not punitive” and that “[w]hatever the measure of damages, the buyer . . . must prove, at least to a reasonable probability, the amount of these damages.” *Id.* at 78 (quotation omitted). However, the supreme court also stated, “It is not necessary, nor would it be possible for the buyer to minutely detail each element of damage.” *Id.*

Nothing in the caselaw cited by TestResources precludes the use of estimates identified in interrogatories, which were received as an exhibit during trial, to properly support findings related to damages. Moreover, Metal Tech’s president testified consistent with the estimated damages identified in the interrogatories. The district court, by accepting these estimated amounts in its damages findings, implicitly found Metal Tech’s president credible. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that district court’s findings “implicitly indicate[d]” that it found certain evidence credible). And, because we defer to the district court’s credibility determinations, the district court did not abuse its discretion by making the findings related to damages based on interrogatories and trial testimony. *See Minn. R. Civ. P. 52.01; Sefkow*, 427 N.W.2d at 210.

B. Engineering Expenses

TestResources also challenges the \$40,286.26 in “engineering expenses” and the \$3,340.85 in “travel expenses for failed testing” awarded to Metal Tech because, according to TestResources, these were expert costs, not damages.

TestResources cites three cases to support this argument, but all involve expert-witness fees as an award for costs and disbursements due to expert testimony and

preparation, not damages. *See Blehr v. Anderson*, 955 N.W.2d 613, 624 (Minn. App. 2021); *Quade & Sons Refrigeration, Inc. v. Minn. Mining & Mfg. Co.*, 510 N.W.2d 256, 261 (Minn. App. 1994), *rev. denied* (Minn. Mar. 15, 1994); *Buscher v. Montag Dev., Inc.*, 770 N.W.2d 199, 209-10 (Minn. App. 2009), *rev. denied* (Minn. Oct. 28, 2009). When reviewing the evidence provided in support of damages, as we are here asked to do, appellate courts look for “a sufficient basis to support a reasonable inference” that the damages claim “resulted directly from” the breach of contract. *Hydra-Mac, Inc., v. Onan Corp.*, 450 N.W.2d 913, 921 (Minn. 1990).

The record supports the district court’s damages award. The damages evidence related to the engineering expenses included the cost of travel and lodging to “inspect the defective machine” and the expenses associated with “hiring engineers to determine the issues with the defective machine and the appropriate steps to mitigate damages.” Metal Tech’s president also testified that the engineering expenses occurred “after the failure of the demonstrated test . . . while [Metal Tech was] trying to salvage this case” and that Metal Tech used the “engineering support . . . to see what was necessary . . . to recover this.” We conclude that the damages evidence provided by Metal Tech during trial allowed the district court to reasonably infer that these costs were incurred directly from the breach of contract.

C. Causation

TestResources argues that the district court erred by awarding Metal Tech damages that were “not reasonably caused by any breach of contract.” “The proof required to support contract damages is similar to that of tort: the damages must result from (or be

caused by) the breach.” *Nguyen v. Control Data Corp.*, 401 N.W.2d 101, 105 (Minn. App. 1997). We have concluded that the district court properly determined that TestResources breached its contract with Metal Tech, and it is clear that each of the damages claims itemized by the district court is associated with the defective machine.

Thus, the district court acted within its discretion by awarding these damages to Metal Tech.

Affirmed.